charge on a customer's bill.[61] AirTouch's proposal is unsatisfactory because CMRS providers would have the incentive (and ability) to mislabel or otherwise hide interexchange charges on customer bills in order to avoid rate integration requirements. As AirTouch itself points out, CMRS providers often recover interexchange costs indirectly through monthly access fees, per-minute rates, or packages of minutes.[62] It should not matter whether the interexchange charge is expressly labeled "interexchange" on a customer's bill, or is assessed indirectly through higher access fees or through higher per-minute airtime rates. If a CMRS provider charges extra for interexchange service, Section 254(g) requires that the interexchange charge -- however it may be labeled -- be rate integrated.[63]

The most obvious example of a discrete interexchange charge is a roaming charge. As discussed above (pp. 7-8 & n.19), in 1986 the Commission expressly determined that roaming charges were interexchange charges. Thus, pursuant to Section 254(g), roaming charges must be rate integrated. PrimeCo's statement that the Commission has never required CMRS providers to integrate their roaming charges[64] is irrelevant: Section 254(g) mandates that all interexchange rates be integrated, regardless of whether the Commission enforced this requirement in the past.

---

[61] AirTouch Petition at 6, 17.

[62] Id. at 12.

[63] To the extent that an interexchange charge is hidden within a "local" airtime charge, that portion of the airtime charge must be rate integrated. AirTouch's claim that the State has agreed that toll services and airtime are different services that need not be cross-integrated is a misstatement of the State's position. AirTouch Petition at 13. The State considers toll and airtime to be components of a single, CMRS service.

[64] PrimeCo Petition at 12 n.42.

VI. SECTION 254(g) REQUIRES THAT ALL INTEREXCHANGE CMRS CALLS BE RATE INTEGRATED, REGARDLESS OF WHETHER THEY ORIGINATE AND TERMINATE WITHIN A SINGLE MAJOR TRADING AREA

A. Classifying CMRS Calls as "Local" or "Interexchange" Based on MTAs Is Arbitrary and Does Not Comport With the Definition of "Telephone Toll Service" in the Communications Act

CTIA asserts that all CMRS calls within a Major Trading Area ("MTA") are local calls, not interexchange, and are thus not subject to Section 254(g), even though many of these calls are interstate and likely travel across multiple CMRS and landline networks.[65] CTIA notes that the Commission utilizes MTAs to define a CMRS provider's local service area for purposes of paying reciprocal compensation rates to a LEC (as opposed to paying access charges).[66]

This analogy is inadequate. Reciprocal compensation is based on Section 251(b)(5) of the 1996 Act, which says nothing about interexchange services. In the absence of express statutory language, it is within the Commission's reasoned discretion to determine the service area within which CMRS calls qualify for reciprocal compensation. In contrast, Section 254(g) expressly directs the Commission to integrate the rates of all "interstate interexchange telecommunications services." Although the Communications Act does not define the term "interexchange," the proper definition of "interexchange" is "telephone toll service," which is defined as "telephone service between stations in different exchange areas for which there is made a separate charge not included in contracts with subscribers for exchange service."[67] This

---

[65] CTIA Petition at 3.

[66] See Local Competition Order, 11 FCC Rcd at 16014.

[67] 47 U.S.C. § 153(48) (emphasis added).

definition of "interexchange" fits nicely in the CMRS context because, as the State argues above, the rate integration requirement of Section 254(g) should apply to those CMRS calling plans that possess a toll service charge (direct or hidden) separate from local airtime. In conclusion, Section 254(g) requires the Commission to reject CTIA's assertion that all intra-MTA calls are automatically "local" calls.

B. The CMRS Industry Should Be More Forthcoming in Providing the Commission With Network Information That Would Help Determine Which CMRS Calls Are "Interexchange"

Although it is clear that the Communication Act's definition of "telephone toll service" should be used to classify which CMRS calls are "interexchange," determining what, in the CMRS context, constitutes "a call between stations in different exchange areas" is not as clear. Nevertheless, one obvious example of interexchange calling is a CMRS call that utilizes resold long-distance services from landline carriers. Many, if not most, long-distance CMRS calls are completed using landline facilities of another carrier or of the CMRS provider itself. Because there is no ambiguity regarding the "interexchange" or "local" nature of landline facilities, CMRS calls could be classified in accordance with the classification of the underlying resold landline facility.[68] Another obvious example of interexchange calling is a CMRS call that "roams" between the CMRS systems of two different CMRS providers. Yet another possible type of interexchange calling could be a CMRS call between two mobile telephone switching offices ("MTSOs"), or between an MTSO and a landline LEC facility, that are located in different licensed service territories. Rate integration would be required for all such calls,

---

[68] AirTouch concedes that when CMRS providers utilize resold long-distance services, customer bills often reflect separate charges for toll service and local airtime. AirTouch Petition at 9-10.

provided that they were interstate and the CMRS provider assessed a separate charge for the interexchange portion of the call.

The State submits that this is an issue that warrants more analysis. The problem with using MTAs as the dividing line between "local" and "interexchange" calls is that MTAs are very large in size. Classifying as "local" all calls in such a large area would severely undercut the effectiveness of the rate integration requirement and its underlying universal service purpose. MTAs are also arbitrary because they do not correspond with the smaller licensed service territories of many CMRS providers, including cellular providers. CMRS providers are, of course, most familiar with their wireless networks and their billing arrangements. CMRS providers also know the interrelationship between their MTSOs, and between landline LEC facilities and their MTSOs. The Commission should require CMRS providers to be more forthcoming in producing information on the technical aspects of their wireless networks.

VII. SECTION 254(g) REQUIRES RATE INTEGRATION ACROSS CMRS AFFILIATES, EXCEPT IN CERTAIN LIMITED SITUATIONS

The petitioners argue that CMRS providers often operate through complex partnership structures in which many independent entities hold ownership interests.[69] The result is that CMRS companies that are partners in one market may be competitors in other markets. Under the Commission's current definition of "affiliate,"[70] these CMRS companies

---

[69] AirTouch Petition at 14; PrimeCo Petition at 15; PCIA Petition at 9; Bell Atlantic Petition at 14-15.

[70] 47 U.S.C. § 32.9000.

would be required to integrate their rates even in markets where they were competing against each other.

The State is sensitive to the competition issues presented by the complex ownership structures of the CMRS industry. Therefore, a limited modification of the "affiliate" definition may be appropriate. AirTouch states that it would accept rate integration across CMRS affiliates provided that only entities which: (1) are identically owned by a single carrier; and (2) serve separate geographic areas, would be considered "affiliated" and thus required to integrate their interexchange rates.[71] AirTouch's proposal, although a start, restricts the definition of "affiliate" beyond what is necessary to preserve competition.

The State agrees with AirTouch that "affiliation" should not apply to: (1) multiple, competing parent companies that jointly control a CMRS provider; and (2) commonly-owned CMRS providers to the extent that they compete in the same geographic service area. However, AirTouch provides no justification for limiting affiliation to CMRS providers that are "identically owned by a single provider." If one CMRS provider is owned 94 percent by Company X and another CMRS provider is owned 85 percent by Company X, these two CMRS providers should be considered affiliates because they are commonly controlled by the same parent company. The important issue is control, not whether the control is based on "identical" ownership interests or on ownership by a "single" company.

While the State would not object to a limited modification of the "affiliate" definition (as outlined above), the Commission should reaffirm that Section 254(g) requires rate integration across affiliates for all interexchange carriers, including CMRS carriers. To rule

---

[71] AirTouch Petition at 15-16.

otherwise would allow companies "to avoid the Congressional mandate of integrated interexchange rates by using or creating multiple interexchange carrier subsidiaries, each serving a separate geographic area."[72]

CONCLUSION

For the aforementioned reasons, the State respectfully requests that all of the petitions for reconsideration be DENIED. The State would not, however, object to two limited exceptions. First, rate integration need not be attempted in the case of truly distance-insensitive wide-area calling plans (i.e., plans without any separate charge -- express or hidden -- for interexchange service). Second, a limited modification of the Commission's "affiliate" definition -- as outlined in Part VII above -- may be appropriate to accommodate the complex ownership structure in the CMRS industry.

Respectfully submitted,

THE STATE OF HAWAII

By: James M. Fink
Herbert E. Marks
James M. Fink

Squire, Sanders & Dempsey, L.L.P.
1201 Pennsylvania Avenue, N.W.
P.O. Box 407
Washington, D.C. 20044
(202) 626-6600

Its Attorneys

October 31, 1997

Kathryn Matayoshi,
Director

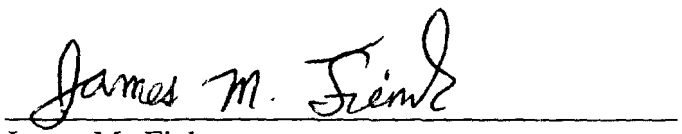
Charles W. Totto,
Executive Director
Division of Consumer Advocacy
DEPARTMENT OF COMMERCE
AND CONSUMER AFFAIRS
250 South King Street
Honolulu, Hawaii 96813
(808) 586-2770
STATE OF HAWAII

---

[72] Reconsideration Order at ¶ 15.

CERTIFICATE OF SERVICE

I, James M. Fink, do hereby certify that on this 31st day of October, 1997, I have caused a copy of the foregoing "Opposition of the State of Hawaii" in CC Docket No. 96-61 to be served via first class United States Mail, postage pre-paid, upon the persons listed below.



James M. Fink

*James D. Schlichting
Chief, Competitive Pricing Division
Common Carrier Bureau
Federal Communications Commission
1919 M Street, N.W., Room 518
Washington, D.C. 20554

*Patrick J. Donovan
Common Carrier Bureau
Federal Communications Commission
1919 M Street, N.W., Room 518
Washington, D.C. 20554

*William J. Bailey
Common Carrier Bureau
Federal Communications Commission
1919 M Street, N.W. Room 518
Washington, D.C. 20554

*Jeanine Poltronieri
Associate Chief,
Wireless Telecommunications Bureau
Federal Communications Commission
2025 M Street, N.W. Room 5002
Washington, D.C. 20554

*International Transcription Services
1231 20th Street, N.W.
Washington, D.C. 20036

*Senator Daniel K. Inouye
United States Senate
722 Hart Office Building
Washington, D.C. 20510-1101

*Mrs. Margaret Cummisky
Legislative Director
Office of Senator Daniel K. Inouye
722 Hart Office Building
Washington, D.C. 20510-1102

*Kevin M. Joseph
Minority Staff Counsel
Senate Committee on Commerce, Science & Transportation
516 Dirksen Office Building
Washington, D.C. 20510-6130

*Senator Daniel K. Akaka
United States Senate
720 Hart Office Building
Washington, D.C. 20510-1101

* = **Hand Delivery**

*Ms. Nancy Langley
Office of Senator Daniel K. Akaka
United States Senate
720 Hart Office Building
Washington, D.C. 20510-1101

*Representative Patsy T. Mink
United States House of Representatives
2135 Rayburn Office Building
Washington, D.C. 20515-1101

*Representative Neil Abercrombie
United States House of Representatives
1233 Longworth Office Building
Washington, D.C. 20515-1101

Mark J. Golden
PERSONAL COMMUNICATIONS INDUSTRY ASSOCIATION
500 Montgomery Street, Suite 700
Alexandria, Virginia 22314-1561

S. Mark Tuller
Vice President - Legal and External Affairs, General Counsel and Secretary
Bell Atlantic Mobile, Inc.
180 Washington Valley Road
Bedminster, New Jersey 07921

William B. Barfield
Jim O. Llewellyn
BellSouth Corporation
1155 Peachtree Street, NE, Suite 1800
Atlanta, Georgia 30309-2641

William L. Roughton, Jr.
Associate General Counsel
PrimeCo Personal Communications, L.P.
601 13th Street, N.W., Suite 320 South
Washington, D.C. 20005

Kathleen Q. Abernathy
David A. Gross
AirTouch Communications
1818 N Street, Suite 800
Washington, D.C. 20036

Michael F. Altschul
Vice President, General Counsel
CELLULAR TELECOMMUNICATIONS INDUSTRY ASSOCIATION
1250 Connecticut Avenue, N.W.
Washington, D.C. 20036

George Y. Wheeler, Esq.
TELEPHONE AND DATA SYSTEMS, INC.
c/o Kotten & Naftalin, L.L.P.
1150 Connecticut Avenue, N.W.
Suite 1000
Washington, D.C. 20036

*** = Hand Delivery**